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Fax No. 513-627-8118 Phone No. 513-627-4597

Application No.: 10/706,378

Inventor(s): Smith *et al.*

Filed: November 12, 2003

Docket No.: CM-2477M2D

Confirmation No.: 6378

**FACSIMILE TRANSMITTAL SHEET AND  
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- 1) Response to Notification of Non-Compliant Appeal Brief – 16 Pages

Number of Pages Including this Page: 17

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/706,378  
Inventor(s) : Smith et al.  
Filed : November 12, 2003  
Art Unit : 1751  
Examiner : G. Webb  
Docket No. : CM2477M2D  
Confirmation No. : 6378  
Customer No. : 27752  
Title : Dishwashing Product

**RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

In response to the second Notification of Non-Complaint Appeal Brief filed mailed on April 17, 2007 attached is the original Appeal Brief filed with corrections requested.

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on August 14, 2006.

A timely Notice of Appeal was filed on November 14, 2006. Please note that January 14, 2007, falls on a Sunday and Monday, January 15, 2007, is a federal holiday.

**REAL PARTY IN INTEREST**

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

**RELATED APPEALS AND INTERFERENCES**

There are no known related appeals, interferences, or judicial proceedings.

**STATUS OF CLAIMS**

Claims 1 to 41 are rejected.

Claims 1 to 41 are appealed.

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A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

### STATUS OF AMENDMENTS

Amendment was filed on October 16, 2006 (October 14, 2006 fell on a Saturday), but was not entered.

### SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1: A unit dose form (pg. 4, lines 22-30) water-soluble pouch for use in an automatic dishwashing machine, where the water-soluble pouch has one or more dishwashing compositions. The water-soluble pouch has a degree of deformability greater than about 5% (see pg. 3, lines 24-33; pg. 4, lines 10-20) and a shape and size such that said water-soluble pouch occupies more than about 40% of the volume (see pg. 3, line 33 – pg. 4, line 4), of an individual compartment of a dispenser compartment of an automatic dishwashing machine. The dispenser compartment has one or more individual compartments when said dispenser compartment is in a closed state (see pg. 3, line 33 – pg. 4, line 4).

Claim 38: A unit dose form (pg. 4, lines 22-30) water-soluble pouch for use in an automatic dishwashing machine, wherein the water-soluble pouch comprising at least one piece of water-soluble film (pg. 9, lines 18-29) that at least partially encloses said one or more dishwashing compositions. The water-soluble pouch having a degree of deformability greater than about 5% (see pg. 3, lines 24-33; pg. 4, lines 10-20) and a shape and size such that said water-soluble pouch occupies more than about 40% of a container that is of a size in the range from about 15 ml to about 70 ml (see pg. 3, line 33 – pg. 4, line 4).

Claim 40: A water-soluble pouch for use in a method of washing dishware/tableware in an automatic dishwashing machine which has a single or multi-compartment product dispenser which is normally closed and sealed after charging said machine and prior to delivery of a dishwashing product into the wash liquor. The unit dose form (pg. 4, lines 22-30) water-soluble pouch has one or more dishwashing compositions. The water-soluble pouch having a degree of deformability greater than about 5% (see pg. 3, lines 24-33; pg. 4, lines 10-20) and a shape and size such that said

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pouch occupies more than about 40% of the volume of the corresponding compartment of said product dispenser in its closed state (see pg. 3, line 33 – pg. 4, line 4). The method comprises the step of contacting said dishware/tableware with said one or more dishwashing compositions in said pouch.

Claim 41: A unit dose form (pg. 4, lines 22-30) water-soluble pouch for use in an automatic dishwashing machine having one or more dishwashing compositions. The water-soluble pouch being deformable (see pg. 4, lines 10-20), and having a shape and size such that said water-soluble pouch is compressibly contained (pg. 3, lines 18-22) in an individual dispenser compartment when said dispenser compartment is in a closed state.

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-41 stand rejected under 35 U.S.C. §102 over US 2002/0077264.

Claims 1-41 stand rejected under 35 U.S.C. §102 over US 2005/0049164.

Claims 1-41 stand rejected under 35 U.S.C. §102 over US 6,492,312.

#### ARGUMENTS

##### Rejection Under 35 USC §102 Over US 2002/0077264

The Office Action maintains this rejection stating that in paragraph [0027] that it is stated, “preferably, the pouch, in particular the first pouch, is made of a material which is stretchable, as set out herein.”. The Office Action further states that the term “stretchable” would either directly anticipate or inherently anticipate the applicant’s term “deformability”.

Applicants would like to draw the Board’s attention to the claim language of Claim 1 pending in the present case, to exemplify the claimed properties of the water-soluble pouch is discussed in Claims 1, 38, 40 and 41:

A water-soluble pouch for use in an automatic dishwashing machine comprising one or more dishwashing compositions in a unit dose form, said water-soluble pouch having a degree of deformability greater than

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about 5% and a shape and size such that said water-soluble pouch occupies more than about 40% of the volume of an individual compartment of a dispenser compartment of an automatic dishwashing machine that has one or more individual compartments when said dispenser compartment is in a closed state.

Applicants would also like to draw the Board's attention to the fact that the reasons for the Examiner maintaining the rejection under 35 U.S.C. §102 all address the characteristics of material making a pouch and not the pouch itself. Applicants submit that should it be the argument that a film such as the one discussed in US 2002/0077264 is equated to a complete water-soluble pouch comprising dishwashing composition as defined on page 4, lines 22-25, Applicants submit that this interpretation of the claim language is contrary to that defined by Applicants. See §2111 discussing claim interpretation.

Claim 1 clearly states that the water-soluble pouch comprises one or more dishwashing composition in a unit dose form and that the entire water-soluble pouch, not just the material making the pouch alone, has the required degree of deformability and occupation of volume of a dispenser compartment of an automatic dishwashing machine.

Applicants maintain that US 2002/0077264 does not recognize or disclose the deformability parameter for the water-soluble pouch claimed and request that the rejection under 35 U.S.C. §102 be withdrawn.

Additionally, the Office Action states that the Examiner is unaware of any dishwashing pouch that possesses rigid dimensions. Applicants are unaware of an MPEP section where the lack of knowledge by the Examiner for an element, not actually claimed by the Applicants, impacts the patentability of the claims at hand – especially as a rational justify a rejection under 35 U.S.C. §102 such as the instant case.

As such, Applicants would like to state for clarification that the present claims are not directed to a dishwashing pouch that possesses rigid dimension, rather it is directed to a water-soluble pouch that possess a certain deformability parameter and occupation of volume of a dispenser compartment of an automatic dishwashing machine. Applicants maintain that US 2002/0077264 does not recognize or disclose the deformability

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parameter for the water-soluble pouch claimed and request that the rejection under 35 U.S.C. §102 be withdrawn.

Rejection Under 35 USC §102 Over US 2005/0049164

The Office Action maintains this rejection stating that the pouch is made from a "stretchable material" in paragraph [0039]. The Office Action equates "stretchable material" with a deformable body.

Applicants would like to draw the Board's attention to the claim language of Claim 1 pending in the present case, to exemplify the claimed properties of the water-soluble pouch is discussed in Claims 1, 38, 40 and 41:

A water-soluble pouch for use in an automatic dishwashing machine comprising one or more dishwashing compositions in a unit dose form, said water-soluble pouch having a degree of deformability greater than about 5% and a shape and size such that said water-soluble pouch occupies more than about 40% of the volume of an individual compartment of a dispenser compartment of an automatic dishwashing machine that has one or more individual compartments when said dispenser compartment is in a closed state.

Applicants would also like to draw the Board's attention to the fact that the reasons for the Examiner maintaining the rejection under 35 U.S.C. §102 all address the characteristics of material making a pouch and not the pouch itself. Applicants submit that should it be the argument that a film such as the one discussed in US 2005/0049164 is equated to a complete water-soluble pouch comprising dishwashing composition as defined on page 4, lines 22-25, Applicants submit that this interpretation of the claim

language is contrary to that defined by Applicants. See §2111 discussing claim interpretation.

Claim 1 clearly states that the water-soluble pouch comprises one or more dishwashing composition in a unit dose form and that the entire water-soluble pouch, not just the

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material making the pouch alone, has the required degree of deformability and occupation of volume of a dispenser compartment of an automatic dishwashing machine.

Applicants maintain that US 2005/0049164 does not recognize or disclose the deformability parameter for the water-soluble pouch claimed and request that the rejection under 35 U.S.C. §102 be withdrawn.

Additionally, the Office Action states that the Examiner is unaware of any dishwashing pouch that possesses rigid dimensions. Applicants are unaware of an MPEP section where the lack of knowledge by the Examiner for an element, not actually claimed by the Applicants, impacts the patentability of the claims at hand -- especially as a rational justify a rejection under 35 U.S.C. §102 such as the instant case.

As such, Applicants would like to state for clarification that the present claims are not directed to a dishwashing pouch that possesses rigid dimension, rather it is directed to a water-soluble pouch that possess a certain deformability parameter and occupation of volume of a dispenser compartment of an automatic dishwashing machine. Applicants maintain that US 2005/0049164 does not recognize or disclose the deformability parameter for the water-soluble pouch claimed and request that the rejection under 35 U.S.C. §102 be withdrawn.

Rejection Under 35 USC §102 Over US 6,492,312

The Office Action maintains this rejection stating that in Col. 3, lines 40-65 of US 6,492,312, the water-soluble resin should be strong and pliable and then equates the term "pliable" with deformability".

Applicants would like to draw the Board's attention to the claim language of Claim 1 pending in the present case, to exemplify the claimed properties of the water-soluble pouch is discussed in Claims 1, 38, 40 and 41:

A water-soluble pouch for use in an automatic dishwashing machine comprising one or more dishwashing compositions in a unit dose form, said water-soluble pouch having a degree of deformability greater than about 5% and a shape and size such that said water-soluble pouch

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occupies more than about 40% of the volume of an individual compartment of a dispenser compartment of an automatic dishwashing machine that has one or more individual compartments when said dispenser compartment is in a closed state.

Applicants would also like to draw the Board's attention to the fact that the reasons for the Examiner maintaining the rejection under 35 U.S.C. §102 all address the characteristics of material making a pouch and not the pouch itself. Applicants submit that should it be the argument that a film such as the one discussed in US 6,492,312 is equated to a complete water-soluble pouch comprising dishwashing composition as defined on page 4, lines 22-25, Applicants submit that this interpretation of the claim language is contrary to that defined by Applicants. See §2111 discussing claim interpretation.

Claim 1 clearly states that the water-soluble pouch comprises one or more dishwashing composition in a unit dose form and that the entire water-soluble pouch, not just the material making the pouch alone, has the required degree of deformability and occupation of volume of a dispenser compartment of an automatic dishwashing machine.

Applicants maintain that US 6,492,312 does not recognize or disclose the deformability parameter for the water-soluble pouch claimed and request that the rejection under 35 U.S.C. §102 be withdrawn.

Additionally, the Office Action states that the Examiner is unaware of any dishwashing pouch that possesses rigid dimensions. Applicants are unaware of an MPEP section where the lack of knowledge by the Examiner for an element, not actually claimed by the Applicants, impacts the patentability of the claims at hand – especially as a rational justify a rejection under 35 U.S.C. §102 such as the instant case.

As such, Applicants would like to state for clarification that the present claims are not directed to a dishwashing pouch that possesses rigid dimension, rather it is directed to a water-soluble pouch that possess a certain deformability parameter and occupation of volume of a dispenser compartment of an automatic dishwashing machine. Applicants maintain that US 6,492,312 does not recognize or disclose the deformability parameter



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for the water-soluble pouch claimed and request that the rejection under 35 U.S.C. §102  
be withdrawn.

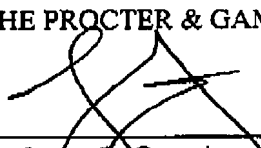
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SUMMARY

In view of all of the above, it is respectfully submitted that the Examiner's rejection under 35 U.S.C. §102 of Claims 1 to 41 be reconsidered and withdraw in view of the comments above.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



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Date: September 17, 2007

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#### CLAIMS APPENDIX

1. (Rejected) A water-soluble pouch for use in an automatic dishwashing machine comprising one or more dishwashing compositions in a unit dose form, said water-soluble pouch having a degree of deformability greater than about 5% and a shape and size such that said water-soluble pouch occupies more than about 40% of the volume of an individual compartment of a dispenser compartment of an automatic dishwashing machine that has one or more individual compartments when said dispenser compartment is in a closed state.
2. (Rejected) The water-soluble pouch of Claim 1 wherein the shape and size of said water-soluble pouch are such that said pouch occupies more than about 40% of a volume that is of a size in the range from about 15 ml to about 70 ml.
3. (Rejected) The water-soluble pouch of Claim 1 having a degree of deformability greater than about 8% and a shape and size such that said water-soluble pouch occupies more than about 50% of the volume of the dispenser compartment of an automatic dishwashing machine when said dispenser compartment is in a closed state.
4. (Rejected) The water-soluble pouch of Claim 3 wherein the shape and size of said water-soluble pouch are such that said pouch occupies more than about 50% of a volume that is of a size in the range from about 15 ml to about 70 ml.
5. (Rejected) The water-soluble pouch of Claim 1 having a degree of deformability greater than about 10% and a shape and size such that said water-soluble pouch occupies more than about 60% of the volume of the dispenser compartment of an automatic dishwashing machine when said dispenser compartment is in a closed state.

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6. (Rejected) The water-soluble pouch of Claim 5 wherein the shape and size of said water-soluble pouch are such that said pouch occupies more than about 60% of a volume that is of a size in the range from about 15 ml to about 70 ml.
7. (Rejected) The water-soluble pouch of Claims 1, 2, 3, 4, 5, or 6 wherein said water-soluble pouch has a shape and size such that it is in a state of compression when it is the dispenser compartment of an automatic dishwashing machine and said dispenser compartment is in a closed state.
8. (Rejected) The water-soluble pouch of Claim 1 wherein said pouch comprises at least one piece of water-soluble film that at least partially encloses said one or more dishwashing compositions.
9. (Rejected) The water-soluble pouch of Claim 8 wherein said at least one piece of water-soluble film comprises polyvinyl alcohol.
10. (Rejected) The water-soluble pouch of Claim 8 wherein at least one piece of water-soluble film is thermo-formed into a configuration for at least a portion of said water-soluble pouch.
11. (Rejected) The water-soluble pouch of Claim 8 wherein at least one piece of water-soluble film is vacuum-formed into a configuration for at least a portion of said water-soluble pouch.
12. (Rejected) A water-soluble pouch of Claim 8 comprising a single compartment for said one or more dishwashing compositions.
13. (Rejected) The water-soluble pouch of Claim 12 wherein said one or more dishwashing compositions comprises a gel.
14. (Rejected) The water-soluble pouch of Claim 13 wherein said gel is translucent.
15. (Rejected) The water-soluble pouch of Claim 13 wherein water-soluble pouch contains an air bubble therein.

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16. (Rejected) The water-soluble pouch of Claim 15 wherein said air bubble has a volume of up to about 50% of the volume of said pouch.

17. (Rejected) A water-soluble pouch according to Claim 13 that displays anisotropic deformability.

18. (Rejected) The water-soluble pouch of Claims 1, 12, or 13 wherein said one or more dishwashing compositions comprises a builder selected from the group consisting of: citrates, carbonates; polyphosphates; silicates; and mixtures thereof.

19. (Rejected) The water-soluble pouch of Claims 1, 12, or 13 wherein said one or more dishwashing compositions comprise at least the following ingredients: potassium tripolyphosphate and a citrate.

20. (Rejected) The water-soluble pouch of Claim 19 wherein said one or more dishwashing compositions comprise one or more enzymes.

21. (Rejected) The water-soluble pouch of Claim 20 wherein said one or more enzymes comprise protease and amylase enzymes.

22. (Rejected) A water-soluble pouch of Claim 8 comprising more than one compartment for said one or more dishwashing compositions.

23. (Rejected) The water-soluble pouch of Claim 22 comprising at least one compartment containing a powder composition.

24. (Rejected) The water-soluble pouch of Claim 23 wherein said powder composition comprises a builder selected from the group consisting of: citrates, carbonates; polyphosphates; silicates; and mixtures thereof.

25. (Rejected) The water-soluble pouch of Claim 24 wherein said builder comprises a polyphosphate.

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26. (Rejected) The water-soluble pouch of Claim 25 further comprising a carbonate.
27. (Rejected) The water-soluble pouch of Claim 26 further comprising a silicate.
28. (Rejected) The water-soluble pouch of Claim 23 wherein said powder composition further comprises one or more enzymes.
29. (Rejected) The water-soluble pouch of Claims 23 or 28 wherein said powder composition further comprises a bleaching agent.
30. (Rejected) The water-soluble pouch of Claim 29 wherein said bleaching agent comprises a particulate bleach.
31. (Rejected) The water-soluble pouch of Claim 29 wherein said bleaching agent is selected from the group consisting of: sodium perborate and sodium percarbonate.
32. (Rejected) The water-soluble pouch of Claim 23 wherein said multi-compartment pouch comprises at least one compartment separate from the compartment containing said powder composition, and said separate compartment contains a liquid composition.
33. (Rejected) The water-soluble pouch of Claim 32 wherein the compartment of said water-soluble pouch containing said liquid composition contains an air bubble therein.
34. (Rejected) The water-soluble pouch of Claim 32 wherein said liquid composition comprises at least one non-ionic surfactant.
35. (Rejected) The water-soluble pouch of Claim 34 wherein said liquid composition further comprises a solvent.
36. (Rejected) The water-soluble pouch of Claim 32 wherein said liquid composition and said powder composition have different colors.

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37. (Rejected) The water-soluble pouch of Claim 32 wherein said liquid composition and said powder composition have different opacities.

38. (Rejected) A water-soluble pouch for use in an automatic dishwashing machine comprising one or more dishwashing compositions in a unit dose form, said water-soluble pouch comprising at least one piece of water-soluble film that at least partially encloses

said one or more dishwashing compositions, said water-soluble pouch having a degree of deformability greater than about 5% and a shape and size such that said water-soluble pouch occupies more than about 40% of a container that is of a size in the range from about 15 ml to about 70 ml.

39. (Rejected) The water-soluble pouch of Claim 38 wherein said water-soluble pouch has a shape and size such that it is in a state of compression when it is confined within such a container.

40. (Rejected) A water-soluble pouch for use in a method of washing dishware/tableware in an automatic dishwashing machine which has a single or multi-compartment product dispenser which is normally closed and sealed after charging said machine and prior to delivery of a dishwashing product into the wash liquor, wherein said water-soluble pouch comprises one or more dishwashing compositions in a unit dose form, said pouch having a degree of deformability greater than about 5% and a shape and size such that said pouch occupies more than about 40% of the volume of the corresponding compartment of said product dispenser in its closed state, wherein said method comprises the step of contacting said dishware/tableware with said one or more dishwashing compositions in said pouch.

41. (Rejected) A water-soluble pouch for use in an automatic dishwashing machine comprising one or more dishwashing compositions in a unit dose form, said water-soluble pouch being deformable, and having a shape and size such that said water-soluble pouch is compressibly contained in an individual compartment of a dispenser compartment of at least one automatic dishwashing machine that has one or more individual compartments when said dispenser compartment is in a closed state.

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**EVIDENCE APPENDIX**

None



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**RELATED PROCEEDINGS APPENDIX**

None